



D. KENT HURN, CHAIRPERSON

K A N S A S

DEPARTMENT OF ADMINISTRATION
CIVIL SERVICE BOARD

KATHLEEN SEBELIUS,
GOVERNOR

HOWARD R. FRICKE, SECRETARY

MEMORANDUM

TO: Jack Rickerson, Director, Division of Personnel Services
Mark S. Braun, Director, Office of Administrative Hearings
D. Kent Hurn, Chairman, Civil Service Board

FROM: Peggy Graham, Secretary, Civil Service Board

DATE: July 15, 2004

SUBJECT: Quarterly Update

The following reflects the Civil Service Board cases in which action was taken since the April 15, 2004 quarterly report:

A. Cases Decided and/or Disposed Of:

1. **Name Removed**, dismissal *affirmed*
Kansas State University
Electrician Senior. *Appellant* was unable to maintain a harmonious relationship with his co-workers. He was repeatedly counseled officially and unofficially about his inability to control his anger in the workplace. On numerous occasions, he became angry and used profane language towards his supervisors. After hearing all of the evidence, the Board affirmed the decision of the appointing authority.
2. **Name Removed**, 5-day suspension *affirmed*
Larned Correctional Mental Health Facility
Correctional Officer I. *Appellant* flicked the breast of a female co-worker while on duty at the facility. The co-worker was offended by his action and kicked him in the shin in retaliation. After hearing all of the evidence, the Board affirmed the decision of the appointing authority.
3. **Name Removed**, dismissal *withdrawn*
Lansing Correctional Facility
Correctional Officer I. *Appellant* engaged in a verbal altercation with a fellow officer in which she used profane language and threw a piece of cake at him. A week later, she engaged in a verbal

altercation with a food service employee. She had been counseled regarding her inappropriate behavior in the workplace in the past. *Appellant* withdrew her appeal prior to the scheduled hearing in the matter.

4. **Name Removed**, dismissal *withdrawn*
Lansing Correctional Facility
Correctional Officer I. *Appellant* resigned from her position with the facility. On her last day of work, she attempted to introduce contraband into the facility. As a result, her separation from service was changed from resignation to dismissal. *Appellant* withdrew her appeal prior to the scheduled hearing in the matter.
5. **Name Removed**, dismissal *dismissed*
Kansas Department of Transportation
Equipment Operator. *Appellant* appealed his dismissal after the 30-day appeal right expired. He was directed to respond to the interpretation that the Board lacked jurisdiction to hear his appeal due to his untimely filing of the appeal and that if he failed to respond it would be deemed an admission that the Board lacked jurisdiction. He failed to respond and the matter was dismissed for lack of jurisdiction.
6. **Name Removed**, dismissal *affirmed*
Kansas Department of Human Resources
Administrative Law Judge. *Appellant* abused his statutory authority as an ALJ. In the fall of 2003, the agency received some complaints from legislators and attorneys alleging that he was scheduling too many hearings in one day and that he was not permitting hearings to be held in locations near where the workers were injured. His supervisor directed him to respond to these allegations. Rather than responding as directed, he chose to undertake an investigation on his own to determine who had made the complaints. He attempted to put at least one attorney under oath to testify as to who had made the complaints. He also issued a subpoena in a workers' compensation case for his supervisor to appear before him and testify as to the identity of the complainants. His supervisor knew nothing of the workers' compensation case and his inquiry had nothing to do with the case. In fact, he called the attorneys representing the parties in the workers' compensation case and told them they need not appear at the hearing, as it has nothing to do with their clients. The Director issued an order quashing the subpoena; however, the *appellant* held his supervisor in contempt for her failure to appear. He later issued an order saying that he disagreed with the Director's order and again ordered his supervisor to appear before him. He also issued a cease and desist order to the Director ordering her to not interfere in the matter any further. After hearing all of the evidence, the Board affirmed the decision of the appointing authority.
7. **Name Removed**, dismissal *reversed*
Kansas Neurological Institute
Physical Therapy Assistant. *Appellant* was dismissed from her employment for receiving three consecutive unsatisfactory performance evaluations. There was no documentation that the *appellant* was advised of her priority outcomes or that she received sufficient counseling regarding her performance and what was required of her during her special evaluations. In addition, when the *appellant* requested an appeal of her second unsatisfactory performance evaluation, the appointing authority did not inform her of his decision to change or uphold the evaluation within seven days, nor did he appoint an appeal committee within seven days as is required by regulation. After hearing all of the evidence, the Board determined that although the *appellant's* performance was very likely unsatisfactory, the agency had not properly followed the procedures set forth in the Kansas Statutes and Regulations, and the decision was reversed.

8. **Name Removed**, failure to interview *withdrawn*
Departments of Administration, Commerce, Transportation and Human Resources
Appellant was laid off from his position as Assistant Director for the Department of Human Resources, Division of Worker's Compensation. He was eligible for preference in rehire under the Employee Preference Program. Over the next several months, the *appellant* applied for positions for which he was qualified but was not hired for any of the positions. He filed a request for hearing asserting that his rights under the Kansas Civil Service Act were violated. The parties reached a settlement and the *appellant* withdrew his appeal.
9. **Name Removed**, dismissal *withdrawn*
Ellsworth Correctional Facility
Correctional Officer I. *Appellant* exhibited a habitual and flagrantly improper use of leave privileges in that he used fourteen sick days in conjunction with his regular days off in a sixteen-month period. After repeated counseling sessions, he repeatedly failed to get notes from his physician when he was sick and failed to get permission from his physician to return to work. The parties reached a settlement agreement and *appellant* withdrew his request for hearing prior to the scheduled hearing in this matter.
10. **Name Removed**, dismissal *dismissed*
Atchison Juvenile Correctional Facility
Juvenile Correctional Officer I. During a routine security clearance check of all employees it was discovered that the *appellant* had been convicted for passing a worthless check on several occasions over the last several years. Agency policy prevents employees from maintaining their security clearance when they are convicted of prohibited offenses such as passing a worthless check. Because the *appellant* could not maintain her security clearance, she was dismissed from her employment. *Appellant* failed to appear for her scheduled hearing and a default order was issued against her.
11. **Name Removed**, dismissal *affirmed*
Department of Revenue
Customer Service Representative. *Appellant* used her position as an employee of KDOR to have a co-worker enter the computer system and change her tax return to reflect a refund to which she was not entitled. After hearing all of the evidence, the Board affirmed the decision of the appointing authority.
12. **Name Removed**, dismissal *dismissed*
Lansing Correctional Facility
Probationary Correctional Officer I. *Appellant* appealed his dismissal from probationary position. He was directed to respond to the interpretation that the Board lacked jurisdiction to hear his appeal due to his probationary status and that if he failed to respond it would be deemed an admission that the Board lacked jurisdiction. He failed to respond and the matter was dismissed for lack of jurisdiction.
13. **Name Removed**, 5-day suspension *affirmed*
Department of Transportation
Engineering Technician. *Appellant* attended a mandatory training class entitled "Respecting Others in the Workplace". Following the training class, the *appellant* refused to sign the form acknowledging his attendance at the training and outlining what was covered in the training. His reason for refusing to sign was that he disagreed with the content of the class. However, the manner in which he communicated his disagreement was inappropriate and included swearing at the instructor. *Appellant* received a 2-day suspension for the same type of inappropriate behavior just 3 months prior to this incident. After hearing all of the evidence, the Board affirmed the decision of

the appointing authority.

14. **Name Removed**, 1-day suspension *withdrawn*
Kansas Highway Patrol
Trooper. *Appellant* used his position as a Trooper to intimidate and influence a private citizen for personal gain outside of his authority as a Trooper. The appellant withdrew his appeal prior to the scheduled hearing.
15. **Name Removed**, dismissal *modified*
Larned Correctional Mental Health Facility
Correctional Officer I. *Appellant* was dismissed from his employment for failing to report that another officer had kicked an inmate and for refusal to return to the facility on his day off to participate in the investigation into the alleged kicking incident. The evidence did not support that the other officer had kicked the inmate. Three other officers in the area at the time denied seeing her kick the inmate. However, the *appellant* disobeyed a direct order to return to the facility for official business in violation of the union contract between KAPE and DOC, which constitutes insubordination. Therefore, the Board modified the appointing authority's decision from dismissal to a 20-day suspension.
16. **Name Removed**, 3-day suspension *withdrawn*
Kansas Neurological Institute
Developmental Disability Technician I. *Appellant* repeatedly made rude and inappropriate comments to co-workers during team meetings and made demeaning remarks about other staff during team meetings. He has previously received at least one counseling memo and a one-day suspension without pay for the same behavior. His last two performance evaluations required that he improve his relationships with his co-workers. *Appellant* withdrew his appeal prior to the scheduled hearing.
17. **Name Removed**, dismissal *withdrawn*
Kansas Neurological Institute
Developmental Disability Technician I. *Appellant* continued to behave inappropriately in the work place and was unable to maintain a satisfactory and harmonious relationship with his co-workers. After a counseling memo, one-day suspension, and three-day suspension for the same behavior, the *appellant* was dismissed from his employment. *Appellant* withdrew his appeal prior to the scheduled hearing.
18. **Name Removed**, dismissal *dismissed*
Department of Transportation
Equipment Operator. Over a five-year period, *Appellant* caused six preventable traffic accidents. In each instance, the *appellant* was negligent, operating equipment improperly, or violated agency policy. After several suspensions, the agency dismissed him from his employment. *Appellant* failed to appear at the scheduled hearing and a default order was issued.
19. **Name Removed**, dismissal *withdrawn*
Wichita Work Release Facility
Correctional Officer II. *Appellant* engaged in conduct unbecoming a state officer or employee and was insubordinate to her supervisor. The matter was settled and the *appellant* withdrew her appeal prior to the scheduled hearing.

20. **Name Removed**, dismissal *affirmed*
University of Kansas
Custodial Specialist. *Appellant* repeatedly sexually harassed the female student staff and the female permanent staff in both dining halls to which he was assigned to work. On several occasions, he was counseled about the inappropriateness of hugging other staff members, and yet he continued to do so. He cornered female staff members in small rooms and refused to move thereby requiring them to brush against him in order to leave the room. After hearing all of the evidence, the Board affirmed the decision of the appointing authority.
21. **Name Removed**, dismissal *reversed*
Larned Correctional Mental Health Facility
Correctional Officer I. *Appellant* was dismissed for allegedly kicking an inmate and then changing her story about what happened. The Board found no evidence to support the claim that she kicked an inmate. Three other officers in the area at the time stated that they did not see her kick the inmate and she denied kicking the inmate. Only the inmate's story supports the conclusion that he was kicked. Further, the slight differences in the *appellant's* story over the three times she repeated it are insignificant and can be attributed to only answering the actual questions that were asked of her. As more questions were asked, she provided more details. While it would have been preferable that she volunteer more information rather than waiting to be asked, the Board does not find that her behavior rises to the level that disciplinary action is reasonable. The decision of the appointing authority is reversed.
22. **Name Removed**, dismissal *withdrawn*
Social and Rehabilitation Services
Social Work Specialist. *Appellant* was assigned to investigate the alleged sexual abuse of a child in July 2003. As part of her investigation, she was instructed to file an intake report to have the child removed from the abusive home. In November 2003, it was discovered that she had not file that report and the child continued to be sexually abused. In January 2003, an intake report was filed and the child was removed from the abusive home. Because of the *appellant's* failure to complete her investigation and file an intake report in a timely manner, the sexual abuse of the child was prolonged. The *appellant* withdrew her request for appeal prior to the scheduled hearing in the matter.

B. Cases Filed Between April 15, 2004 and July 15, 2004:

1. Name Removed, Department of Revenue, filed April 15, 2004
2. Name Removed, Kansas Neurological Institute, filed April 16, 2004
3. Name Removed, Lansing Correctional Facility, filed April 26, 2004
4. Name Removed, Kansas State University, filed April 30, 2004
5. Name Removed, University of Kansas, filed May 3, 2004
6. Name Removed, Lansing Correctional Facility, filed May 4, 2004
7. Name Removed, Department of Revenue, filed May 6, 2004
8. Name Removed, Department of Transportation, filed May 10, 2004
9. Name Removed, Department of Transportation, filed May 10, 2004
10. Name Removed, Department of Transportation, filed May 18, 2004
11. Name Removed, Department of Corrections, filed May 19, 2004
12. Name Removed, Kansas Neurological Institute, filed May 21, 2004
13. Name Removed, Department of Transportation, filed May 26, 2004
14. Name Removed, University of Kansas, filed May 26, 2004
15. Name Removed, Kansas Veterans Home, filed May 26, 2004
16. Name Removed, Rainbow Mental Health Facility, filed June 14, 2004

17. Name Removed, Rainbow Mental Health Facility, filed July 6, 2004
18. Name Removed, Parsons State Hospital, filed July 12, 2004
19. Name Removed, Social and Rehabilitation Services, filed July 13, 2004
20. Name Removed, Hutchinson Correctional Facility, filed July 14, 2004

C. Cases Still To Be Heard:

1. Name Removed, 2-day suspension, Department of Transportation, set 9/8/04
2. Name Removed, Hutchinson Correctional Facility, set 8/6/04
3. Name Removed, dismissal, Rainbow Mental Health Facility, set 8/5/04
4. Name Removed, dismissal, Department of Revenue, set 9/9/04
5. Name Removed, 2-day suspension, University of Kansas, set 9/21/04
6. Name Removed, dismissal, University of Kansas, set 9/21/04
7. Name Removed, 4-day suspension, Department of Corrections, set 8/4/04
8. Name Removed, dismissal, Rainbow Mental Health Facility, set 8/17/04
9. Name Removed, dismissal, Department of Revenue, set 7/20/04
10. Name Removed, 1-day suspension, University of Kansas, set 8/19/04
11. Name Removed, dismissal, Kansas Veterans Home, set 8/18/04
12. Name Removed, 5-day suspension, Parsons State Hospital, set 8/16/04
13. Name Removed, dismissal, Department of Human Resources, set 7/21/04
14. Name Removed, dismissal, Social and Rehabilitation Services, set 8/3/04

D. Statistics for Completed Cases:

1. Dismissals: 18
2. Demotions: 0
3. Suspensions: 3
4. Other: 1

1. Affirmed: 6
2. Reversed: 2
3. Modified: 1
4. Dismissed: 4
5. Withdrawn: 9

1. Department of Corrections: 8
2. Social and Rehabilitation Services: 4
3. Department of Transportation: 4*
4. Department of Human Resources: 2*
5. Highway Patrol: 1
6. Juvenile Justice Authority: 1
7. Kansas State University: 1
8. Department of Administration: 1*
9. Commerce: 1*
10. Revenue: 1
11. University of Kansas: 1

*One case involved KDOT, KDHR, KDOA, and Commerce